

Department of State Revenue

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Issue

Limited Corporate Partner – Gross Income Tax

Authority: IC 6-2.1-3-25; IC 6-3-1-19; 45 IAC 1.1-1-3(a)(7); 45 IAC 1.1-2-13

45 IAC 1.1-1-3. "Business situs" defined.

(a) A "business situs" arises where possession and control of a property right has been localized in some business or investment activity away from the owner's domicile.

(b) A taxpayer may establish a business situs in ways including, but not limited to, the following:

(7) Ownership (in whole or part) of a partnership doing business in Indiana unless the ownership is that of a limited partner who does not participate in the control of the business.

I. General Statement

A. A corporate partner's distributive share [FN 1] of income received from a partnership [FN 2] is generally subject to the higher rate [FN 3] of Gross Income Tax on that portion [FN 4] of the partnership's gross income that is derived from activities or business conducted in Indiana.

B. A corporate limited partner's distributive share of income received from a partnership is generally subject to Gross Income Tax provided the partner's commercial domicile [FN 5] is in Indiana.

II. "Limited Partner" Defined

As used in this document the term "limited partner" means a partner who has invested money or property in a partnership in return for which the limited partner receives, by agreement with the members of the partnership, a share of partnership profits. The limited partner retains no authority to act in behalf of the partnership in any matter, has no control over the activities of the partnership, and is not liable for the obligations of the partnership.

The true status of a "limited partner" is determined from the actual facts and circumstances of membership in the partnership [FN 6]. A partner whose share of the partnership profits is equal to or greater than 50% creates a rebuttable presumption that the partner participates in the control of the partnership business.

III. Corporate Limited Partner

A. Indiana Commercial Domicile – The entire distribution received from a partnership, whether derived from sources in Indiana or outside of Indiana, is subject to Gross Income Tax at the higher rate.

B. Non-Indiana Commercial Domicile – The distribution received from a partnership, whether derived from sources in Indiana or outside of Indiana, is not subject to Gross Income Tax.

IV. Caveat

This document provides guidance for purposes of determining liability under the Gross Income Tax Act. It cannot be used as guidance for any other tax including Adjusted Gross Income Tax.

[FN 1] 45 IAC 1.1-2-13(a). "[T]he amount determined under...(IRC § 704)... and its prescribed regulations..."

[FN 2] IC 6-2.1-3-25(b). "[A] partnership is exempt from gross income tax."

[FN 3] 45 IAC 1.1-2-13(d)

[FN 4] 45 IAC 1.1-2-13(c) Apportionment determined under IC 6-3-2-2(c through f)

[FN 5] 45 IAC 1.1-6-2(e). "'[C]ommercial domicile' means... "

[FN 6] IC 23-16-4-3(b) Participation in partnership business – Limited partner, allowable activities.